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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ARB.P. 412/2021

DELHIVERY PRIVATE LIMITED Petitioner
Through: Mr.Arjun Krishnan, Mr.Sumit
Srivastava and Mr.Kaustav Som, Advs.

versus

SS SUPPLY CHAIN SOLUTIONS PRIVATE LIMITED Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)
% **14.07.2021**
(Video-Conferencing)

1. This is a petition seeking reference of disputes under two agreements, dated 5th April, 2019 and 6th December, 2019, between the petitioner and the respondent, to arbitration.

2. Though, ideally, two petitions would have to be filed as there are two arbitration agreements and, consequently, two arbitral proceedings would be required to be conducted as per the law laid down by the Supreme Court in *Duro Felguera S.A. v. Gangavaram Port Ltd.*¹, in order to avoid multiplicity of proceedings, I am entertaining this single petition for both the agreements, especially as the respondent, who has not chosen to file a reply to this petition has, in its reply dated 10th March, 2021 to the notice whereby the petitioner

¹ (2017) 9 SCC 729

invoked arbitration under the said agreements, not disputed the referability of the controversy to arbitration. The dispute in the present petition appears to be only with respect to the identity of the arbitrator to arbitrate thereon.

3. In view thereof, it is not necessary to set out the substratum of the dispute between the parties *in extenso*, though it may be said that it is contained in paras 4 to 25 of the petition.

4. The agreements dated 5th April, 2019 and 6th December, 2019 contain identical arbitration clauses which reads thus:

"ARBITRATION:

All Disputes arising out of or in connection with this agreement or its construction or effect or as to the right, duties, obligations or liabilities of the parties hereto, shall be resolved by arbitration conducted exclusively at Delhi under the provisions of Arbitration and Conciliation Act, 1996. A sole Arbitrator shall be appointed by 3SC only, such arbitration shall be conducted by a sole Arbitrator. The arbitration proceedings shall be conducted only in English Language. The decision of the sole arbitrator shall be final and binding on both the parties. The arbitrator so appointed shall be entitled for his arbitration fee which shall be borne by both the parties equally."

5. As the aforesaid clause confers absolute authority to one of the parties to the agreements to appoint the arbitrator, it flies in the face of Section 12(5) of the 1996 Act as well as the law laid down by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*², *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*³ and

² 2019 SCC OnLine SC 1517

Haryana Space Application Centre v. Pan India Consultants (P) Ltd.⁴ and cannot, therefore, be enforced as it stands.

6. As the parties had not been able to agree between themselves as to the arbitrator to arbitrate on the disputes, the task of appointing an arbitrator falls on this Court.

7. Mr. Krishnan, learned Counsel for the petitioner is agreeable to the disputes being referred to arbitration by the Delhi International Arbitration Centre (DIAC).

8. Accordingly, the disputes between the parties is referred to the DIAC for arbitration. The arbitration would be conducted as per the rules and regulations of the DIAC and the arbitrator would be entitled to fees in accordance with the schedule of fees fixed by the DIAC.

9. Needless to say, as disputes arise under two agreements, there shall be two arbitral proceedings, though, given the interconnect between the disputes, they may be assigned to the same arbitrator.

10. This petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

JULY 14, 2021/kr

³ (2019) 5 SCC 755

⁴ (2021) 3 SCC 103